

REMARKS

This responds to the Office Action mailed on May 16, 2005. In this response claims 1, 16-20 and 25 are amended. No claims are canceled or added. As a result, claims 1-8 and 10-25 remain pending in this application. Reconsideration of this application is requested in view of the above amendments and the following remarks.

Claim Objections

Objection: Claims 17-20 were objected to for grammatical informalities.

Response: Claims 17-20, as well as claim 25, have been amended accordingly.

§112 Rejection of the Claims

Rejection: Claims 1-8 and 25 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness.

Response: Claims 1 and 25 have been amended to more clearly define the radial as a radial line. Claims 1 and 25 have also been amended to clearly indicate the position of the radial line. The radial line carries the reference number 942 in FIG. 9. Further support for the radial line may be found at page 17, line 18; page 18, lines 18-23; page 19, line 19 and page 22, lines 15-16, among other places in the specification portion of the above-referenced patent application.

§102 Rejection of the Claims

Rejection: Claim 25 was rejected under 35 U.S.C. § 102(b) for anticipation by Nagorcka (U.S. 5,352,029).

Response: Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires

the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Claim 25 recites "...a driver sprocket for said track having a central axis about which the driver sprocket rotates, the driver sprocket also having a driving portion that includes a center, the driving lugs having sidewalls which make an angle with respect to the inner surface of the track such that when the driving lug engages the driving portion of the driver sprocket, the sidewall of the driving lug being non-parallel to a radial line that intersects the central axis of the driver sprocket engaging the sidewall of the driving lug, and passes through the center of the driving portion of the drive sprocket when engaged with the track, **a line along a surface of the driving lug intersecting the radial line at a point inside the radius of the track.**" This claim was not amended to overcome the art cited but to more clearly define the radial line recited. The Nagorcka reference does not meet the recitations of claim 25. Specifically, the Nagorcka reference does not teach each and every element of the claimed invention, arranged as in the claim. A line on the surface of the driving lug does not intersect the radial passing through the center of the driver sprocket and through the center of the driving portion engaged with the driving lug at a point within the radius of the track. Looking at FIG. 6 of Nagorcka, the radial intersects a line along the surface of the driving lug outside the radius of the track. This is illustrated in Exhibit A attached to this response. Consequently, claim 25 is not anticipated by the Nagorcka reference.

§103 Rejection of the Claims

A. Rejection: Claims 10-15, 17-20 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagorcka.

B. Response: In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable

expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Claim 10 recites "...driving lugs attached to the interior surface of the drive belt, each of the driving lugs having at least a first sidewall making an angle with respect to the pitch line of the track, the angle being in the range of $[90 - (360/2n)]$ plus or minus 5 degrees." The Nagorcka reference does not set forth such a recitation. There is no teaching of an angle being in the range of $[90 - (360/2n)]$ plus or minus 5 degrees. Therefore, the Nagorcka reference fails to teach or suggest all the claim limitations. In addition, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference to yield the teachings. There is no motivation from within the reference to modify the art. The reason set forth by the Examiner is a general design parameter in that the angle selected provides interaction between the lug and the driving member. As a result, claim 10 overcomes the rejection under 35 USC § 103(a) as being unpatentable over Nagorcka.

Claims 11–15, 17-20 and 24 depend from claim 10 and include all the limitations of claim 10 by their dependency. As a result, claims 11–15, 17-20 and 24 overcome the Examiner's rejection under 35 USC § 103(a) as being obvious in view of the Nagorcka reference.

In addition, the Examiner rejected claims 10-15, 17-20 and 24 is based solely on the Nagorcka reference. Applicant respectfully traverses the single reference rejection under 35 U.S.C. § 103 since not all of the recited elements of the claims are found in the Nagorcka reference. Since all the elements of the claim are not found in the Nagorcka reference, Applicant assumes that the Examiner is taking official notice of the missing elements. Applicant respectfully objects to the taking of official notice with a single reference obviousness rejection and, pursuant to *M.P.E.P.* § 2144.03, Applicant respectfully traverses the assertion of Official Notice and requests that the Examiner cite references in support of this position. Applicant also

that the Examiner cite a reference or place an affidavit of personal knowledge in the file for any elements the Examiner contends are commonly used arrangement in the industry.

C. Rejection: Claims 21-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagorcka as applied to claims 10-15, 17-20 and 24 above, and further in view of Witt (U.S. 6,062,662).

D. Response: In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Claims 21-23 overcome the Examiner's rejection under 35 U.S.C. § 103(a) as being unpatentable over Nagorcka as applied to claims 10-15, 17-20 and 24 above, and further in view of Witt (U.S. 6,062,662) since the Examiner fails to make out a proper *prima facie* case of obviousness with respect to claim 10. As indicated above, claim 10 recites "...driving lugs attached to the interior surface of the drive belt, each of the driving lugs having at least a first sidewall making an angle with respect to the pitch line of the track, the angle being in the range of $[90 - (360/2n)]$ plus or minus 5 degrees." The Nagorcka reference does not set forth the recitation of an angle being in the range of $[90 - (360/2n)]$ plus or minus 5 degrees. The Witt reference also does not set forth this recitation as previously admitted by the Examiner in the Office Action of October 12, 2004 (See page 9, lines 2-4 of the Office Action dated 10/12/04). Therefore, the combination of Nagorcka and Witt does not teach or suggest all the elements of claim 10 or the claims depending therefrom, namely claims 21-23. As mentioned previously, there also does not appear to be any suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference

or to combine reference teachings to yield applicant's invention. As a result, claims 21–23 overcome the Examiner's rejection under 35 USC § 103(a) as being obvious in view of the Nagorcka and Witt references.

Allowable Subject Matter

Claims 1-8 were indicated to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112 set forth in the Office Action.

Claim 16 was objected to as being dependent upon a rejected base claim, but was indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In this response to the final office action mailed May 16, 2005, claims 1 and 16 have been amended to place claims 1-8 and 16 into allowable form. Applicant notes the indication of allowable subject matter with appreciation.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6977 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 27th day of June, 2005.

Name

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Signature

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